MARIE M. BUNN

IBLA 85-507 Decided November 12, 1987

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting homesite application AA-8792.

Affirmed.

1. Estoppel--Federal Employees and Officers: Authority to Bind Government

   All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations and reliance on incomplete or incorrect information cannot create any rights not authorized by law.

2. Alaska: Homesites--Equitable Adjudication: Substantial Compliance

   Substantial compliance with the law is a prerequisite for the invocation of equitable adjudication to permit consideration of a homesite purchase application that was not filed within the time required.

3. Administrative Procedure: Hearings--Appeals: Generally--Evidence: Sufficiency--Hearings--Rules of Practice: Hearings

   A hearing is not necessary in the absence of allegations of a material issue of fact, which, if proven, would alter the disposition of the appeal.

APPEARANCES: Anne M. Preston, Esq., Ketchikan, Alaska, for appellant; James R. Mothershead, Esq., Office of the Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Marie M. Bunn has appealed from a decision dated February 22, 1985, by the Alaska State Office, Bureau of Land Management (BLM), rejecting her application to purchase homesite AA-8792.

The notice of location for this homesite was originally filed on February 13, 1974. Both the names Lloyd V. Fillion and Mildred M. Fillion appeared on the notice. Because the notice was signed by Mildred M. Fillion, BLM considered the filing to be hers.

On July 12, 1979, BLM issued a decision canceling the claim as having expired on February 13, 1979, because no application to purchase was filed during the 5-year statutory life of the claim. 1/ No appeal of this decision was filed, though BLM did receive a request from Marie Bunn's husband to reinstate the claim on July 26, 1979, pending further investigation on his part. He also informed BLM that Lloyd Fillion had died in 1977.

In February 1980, an attorney representing the "Fillion heirs" inquired of BLM as to how homesite AA-8792 might be perfected. By letter dated September 16, 1980, BLM advised the attorney that, in order for the case to be reopened and considered for equitable adjudication, the Fillion heirs would have to file an application to purchase and a request for equitable adjudication. BLM expressly pointed out that the "application to purchase form should be witnessed, signed and returned to this office, with the required $10 filing fee."

An application to purchase was filed over 2 years later on January 24, 1983, by Marie M. Bunn, who indicated on the application that she was the former Marie M. Fillion, and was the daughter of Lloyd V. Fillion, who died on December 12, 1977, and Mildred M. Fillion. 2/ This application was ultimately rejected by BLM on February 22, 1985, for numerous reasons.

An application to purchase requires among other things, corroboration by two witnesses and an indication of the use and occupancy of the land for which application is made. Also required is a $10 nonreturnable filing fee (43 CFR 2563.1-1). As the decision here appealed noted, Marie M. Bunn's application did not indicate that improvements were placed on the land, did

---

1/ The notice was filed under the authority of 43 U.S.C. § 687(a) (1982), repealed by section 703(a) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 (1976), effective on and after the tenth anniversary of the date of approval of FLPMA, Oct. 21, 1976. Section 687(a) provides in part:

"[A]ny citizen of the United States, after occupying land of the character described as a homestead or headquarters, in a habitable house, not less than five months each year for three years, may purchase such tract, not exceeding five acres, in a reasonable compact form, without any showing as to his employment or business, upon payment of $2.50 per acre, under rules and regulations to be prescribed by the Secretary of the Interior." Section 687a-1 provides that an application to purchase along with the required proof or showing must be filed within 5 years after the filing of notice of location.

2/ Affidavit of Mildred M. Fillion, attached to appellant's statement of reasons.

not show any occupancy for any specific period of time, 3/ was signed by only one witness, and did not include the $10 filing fee.

Moreover, at the time the decision was rendered, BLM was uncertain as to whether appellant's mother, Mildred M. Fillion, was living or deceased. The decision recites in part:

> If Mildred Fillion is deceased, then it is considered that Marie Bunn is filing as an heir. Any right under a notice of location is personal to the party filing the notice (James Sims, 42 IBLA 231 (1979)). It was held in Severin F. Ulmer, heir of Joseph Ulmer, deceased (A-30375), August 11, 1965, that "even assuming that the heir could succeed to the rights of the ancestor and need not personally make the same showings that his ancestor would have to make, it is obvious that he would have to file an application to purchase showing that his ancestor had met the requirements" (emphasis added). The application filed by Marie M. Bunn does not make any showing that either Mildred or Lloyd Fillion met the requirements of the homesite law. The application is further defective on its face for failure to submit the $10 filing fee and obtaining the signature of a second witness.
>
> Since Marie Bunn's application to purchase was not filed within the five-year statutory life of the claim, if the claim was to be considered, equitable adjudication would have to be invoked. However, equitable adjudication can only be invoked where substantial compliance with the law is asserted and the delay is satisfactorily explained (Richard Lee Farrens, 7 IBLA 133 (1972)). Neither requirement has been made.

Marie M. Bunn timely filed a notice of appeal and statement of reasons. Counsel for Marie M. Bunn has also filed a motion to substitute Mildred M. Fillion for Marie M. Bunn as the real party in interest.

Two arguments are presented on appeal. The first is that any defects in the 1974 application filed by Mildred M. Fillion were cured by the 1983 application to purchase. The second is that, even if all technical filing requirements were not met, all "material requirements" were satisfied and appellant is therefore entitled to equitable adjudication. Appellant contends that BLM repeatedly failed to properly instruct and notify either the Fillions or herself concerning the filing requirements of the homesite law. Appellant contends that equitable adjudication "is available where, as in the present case, it appears that a claimant has substantially complied with homesite law requirements but has failed through an error arising out of ignorance,

---

3/ While the applicant did answer question 10, "Do you maintain a residence other than on this land?" in the negative, no response was provided to question 9, which directed the applicant to provide specifics as to the period of occupancy.

accident or mistake to satisfy the requirements" (Statement of Reasons at 10). Appellant has also requested an evidentiary hearing to resolve factual issues.

BLM contends that the application to purchase fails to make a prima facie showing of entitlement to a homesite patent, as required by the regulations, and was properly rejected for this reason alone. BLM contends further that the filings of both the Fillions and Marie M. Bunn were fraught with so many deficiencies that neither party could qualify for a homesite patent and argues that the prerequisites for the favorable exercise of equitable adjudication are not present.

[1] The application to purchase herein was not filed within the statutory period and was deficient in other respects: It was not corroborated by two persons; it gave no indication that there was a habitable house on the land nor the date when such a house might have been placed on the land; it did not give the dates of applicant's residency; and no $10 filing fee was submitted. All of these requirements are mandatory under 43 CFR 2563.2-1.

The record indicates that both the Fillions and Marie M. Bunn were, or should have been, reasonably well advised concerning filing requirements at all relevant times. In 1973 BLM sent a copy of the regulations to counsel representing the Fillions in the matter of homesite AA-8792. In 1980, the "Fillion heirs" were represented by counsel concerning reopening of the Fillion claim. Marie M. Bunn's 1983 application to purchase was submitted under cover letter of counsel with whom BLM had been in correspondence concerning the claim. Thus, there has been no lack of notice. In any event, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Even if erroneous or incomplete information had been given out by BLM, reliance thereon could not create rights not authorized by law or relieve a claimant of the consequences imposed by a statute for failure to comply with its requirements. Parker v. United States, 457 F.2d 978 (Ct. Cl. 1972).

[2] The scope of equitable adjudication is defined in 43 CFR 1871.1:

> The cases subject to equitable adjudication by the Director Bureau of Land Management, cover the following:
>
> (a) Substantial compliance: All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not effected within the period authorized by law * * * and special cases deemed proper by the Director, Bureau of Land Management where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith there being no lawful adverse claim. [Italics in original.]

As set forth above, 43 U.S.C. § 687a (1982) requires a homesite entryman to occupy his homesite in a habitable house not less than 5 months

each year for 3 years. Furthermore, this residency requirement must be met within the 5 year period following the filing of a notice of location. The record herein is devoid of even an allegation that the land was improved and occupied as required by the statute. Where there has been no substantial compliance there is nothing which can be subject to equitable adjudication.

Cases where equitable adjudication has been applied to permit consideration of a purchase application filed after the 5-year period are crucially different from the case at bar. In Larry L. Lowenstein, 57 IBLA 95 (1981), the only deficiencies encumbering the homesite applicant were a failure to describe the homesite completely and a failure to timely file the application to purchase. There, the applicant had established valid existing rights by occupying the site and constructing a cabin on it. Despite the imperfect description, BLM was able to examine and plot the homesite on its master title plat. Moreover, only two years had elapsed beyond the statutory period for filing as opposed to the almost 7 years shown in the instant case. Similarly, substantial compliance was found in Carla D. Botner, 7 IBLA 335 (1972); Alvin R. Aspelund, 7 IBLA 165 (1972); Richard L. Ferrens, 7 IBLA 133 (1972); and was at least alleged by the applicant in Elizabeth Hickethier, 6 IBLA 306 (1972). In the case at bar, compliance has not been alleged and neither the delay in filing nor the confusion as to proper parties has been explained. These are not circumstances to which equitable adjudication is applicable.

Moreover, there is an additional critical flaw in appellant's case. Even if we ignore the fact that the application to purchase was filed nearly 7 years after the statutory deadline we cannot ignore the fact that the application to purchase was filed by someone who had no present interest in the homesite application. It is now undisputed that Mildred M. Fillion, the only individual who had signed the original homesite notice, is still living. This being the case, the application to purchase filed by Marie M. Bunn, clearly made in her own right, must be rejected for that reason alone. The belated attempt on appeal to substitute Mildred M. Fillion as the real party-in-interest is disingenuous. Mildred M. Fillion never filed an application to purchase. While Mildred M. Fillion may be the real party in interest insofar as the homesite is concerned, she is not a party in interest to the rejection of her daughter's application for the homesite. There is no possible way that equitable adjudication could be used to grant an application to purchase filed by a party who had no cognizable interest in the entry. Cf. Estate of Guy C. Groat, Jr., 46 IBLA 165 (1980) (a relinquishment of a Native allotment application filed by only one of the heirs of the applicant held ineffective).

[3] Appellant has requested an opportunity for a fact-finding hearing. Even on appeal, however, appellant has not alleged facts that would indicate Mildred M. Fillion had substantially complied with the requirements of the Act. 4/ Thus, quite apart from the fact that Mildred M. Fillion has never

4/ Thus, Fillion would be required to show the existence of a habitable house and occupancy thereof for at least 5 months during 3 separate years during the period from Feb. 13, 1974, to Feb. 12, 1979. Under the provisions of the Act of Apr. 29, 1950, 64 Stat. 94, 95, 43 U.S.C. § 687a-1 (1982), no credit can be given for occupancy occurring prior to the date the notice of location was filed. See generally Ramstad v. Hodel, 756 F.2d 1379 (9th Cir. 1985).

made an application to purchase the homesite, a hearing would not be justified. As the Board has held on numerous occasions, a hearing is not necessary in the absence of an allegation of material fact which, if proven, would alter the disposition of the appeal. See, e.g., Stickelman v. United States, 563 F.2d 413, 417 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971); Kim C. Evans, 82 IBLA 319, 323 (1984). Accordingly, the request for a fact-finding hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

R. W. Mullen
Administrative Judge